

TITLE 78 RECODIFICATION - TITLE 78A**CHAPTER 7**

2008 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

Title 78A, Chapter 7, Small Claims Courts.

Highlighted Provisions:

This bill:

►

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**ENACTS:****78A-7-108**, Utah Code Annotated 1953**RENUMBERS AND AMENDS:****78A-7-101**, (Renumbered from 78-6-1, as last amended by Laws of Utah 2004, Chapter 204)**78A-7-102**, (Renumbered from 78-6-6, Utah Code Annotated 1953)**78A-7-103**, (Renumbered from 78-6-8, as last amended by Laws of Utah 1997, Chapter 215)**78A-7-104**, (Renumbered from 78-6-14, as last amended by Laws of Utah 2001, Chapter 46)**78A-7-105**, (Renumbered from 78-6-10, as last amended by Laws of Utah 2004, Chapter 150)**78A-7-106**, (Renumbered from 78-6-15, as last amended by Laws of Utah 1997, Chapter 215)**78A-7-107**, (Renumbered from 78-6-1.5, as last amended by Laws of Utah 1996,

Chapter 198)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78A-7-101**, which is renumbered from Section 78-6-1 is renumbered and amended to read:

CHAPTER 7. SMALL CLAIMS COURTS

[78-6-1]. 78A-7-101. Small claims -- Defined -- Counsel not necessary -- Deferring multiple claims of one plaintiff -- Supreme Court to govern procedures.

(1) A small claims action is a civil action:

(a) for the recovery of money where:

(i) the amount claimed does not exceed \$7,500 including attorney fees but exclusive of court costs and interest; and

(ii) the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed \$7,500 including attorney fees but exclusive of court costs and interest.

(2) The judgment in a small claims action may not exceed \$7,500 including attorney fees but exclusive of court costs and interest.

(3) Counter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence ~~[that]~~ which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

~~[(4) The Judicial Council shall present to the Judiciary Interim Committee prior to the general session of the Legislature during odd-numbered years a report and recommendations concerning the maximum amount of small claims actions.]~~

~~[(5)]~~ (4) (a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:

(i) in person; or

(ii) through authorized employees.

(b) A person or corporation may be represented in an action by an individual who is

not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah rules of small claims procedure as promulgated by the Supreme Court.

~~[(6)]~~ (5) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

~~[(7)]~~ (6) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

Section 2. Section **78A-7-102**, which is renumbered from Section 78-6-6 is renumbered and amended to read:

~~[78-6-6].~~ **78A-7-102. Assignee may not file claim.**

~~[No]~~ A claim ~~[shall]~~ may not be filed or prosecuted in ~~[such]~~ small claim court by any assignee of ~~[such]~~ a claim.

Section 3. Section **78A-7-103**, which is renumbered from Section 78-6-8 is renumbered and amended to read:

~~[78-6-8].~~ **78A-7-103. Object of small claims -- Attachment, garnishment, and execution.**

(1) The hearing in a small claims action has the sole object of dispensing speedy justice between the parties. The record of small claims proceedings shall be as provided by rule of the Judicial Council.

(2) Attachment, garnishment, and execution may issue after judgment as prescribed by law, upon the payment of the fees required for those services.

Section 4. Section **78A-7-104**, which is renumbered from Section 78-6-14 is renumbered and amended to read:

~~[78-6-14].~~ **78A-7-104. Civil filing fees.**

(1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section 78-7-35.

(2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a county justice court are remitted to the county treasurer.

(3) (a) Seven dollars and 50 cents shall be withheld from the fee for the small claims affidavit and allocated to the Judges' Retirement Trust Fund. Five dollars shall be withheld from the fee for a small claims counter affidavit and allocated to the Judges' Retirement Trust Fund.

(b) Two dollars withheld from the civil filing fee in a court of record as provided in Subsection 63-63a-8(4)(b) [~~shall~~] may not apply to the fees collected for small claims actions in justice court.

(4) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is \$10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo filing fee in the court of record.

Section 5. Section **78A-7-105**, which is renumbered from Section 78-6-10 is renumbered and amended to read:

[78-6-10]. 78A-7-105. Appeals -- Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within 30 days of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions[~~, except a~~]. A record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section [~~78-6-1.5~~] **78A-7-107**. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

Section 6. Section **78A-7-106**, which is renumbered from Section 78-6-15 is renumbered and amended to read:

[78-6-15]. 78A-7-106. Costs.

The prevailing party in any small claims action is entitled to costs of the action and also the costs of execution upon a judgment rendered therein.

Section 7. Section **78A-7-107**, which is renumbered from Section 78-6-1.5 is renumbered and amended to read:

[78-6-1.5]. 78A-7-107. Evening hours -- Judges pro tempore.

(1) The district or justice court may request that the Supreme Court appoint a member

125 of the Utah State Bar in good standing, with the member's consent, as judge pro tempore to
126 hear and determine small claims at times, including evening sessions, to be set by the court.

127 [~~Such judges pro tempore, after~~]

128 (2) After being duly sworn, judges pro tempore shall:

129 (a) serve voluntarily and without compensation at the request of the court[~~, shall~~]; and

130 (b) be extended the same immunities, and [~~shall~~] have the same powers with respect to

131 matters within the jurisdiction of the small claims court as [~~may be~~] exercised by a regular

132 judge [~~thereof~~].

133 Section 8. Section **78A-7-108** is enacted to read:

134 **78A-7-108. Report to Judiciary Interim Committee.**

135 The Judicial Council shall present to the Judiciary Interim Committee not later than

136 November 30 of each odd-numbered year a report and recommendation concerning the

137 maximum amount of small claims actions.